

May 3, 1999

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Subject: APEC Electronic Commerce Steering Group Work Plan-Comment  
FR Doc. 99-8425

Dear Ms. Montes:

Thank you for the opportunity to present the views of the Coalition of Service Industries (CSI) on electronic commerce to the APEC Electronic Commerce Steering Group, Federal Register Notice (99-8425).

CSI represents the interests of the American services sector. The great bulk of international commerce on-line consists of services. It encompasses all elements of the service sector, which now accounts for about 75% of U.S. GDP, including telecommunications, information technology, media and publishing, financial services, transportation, travel and tourism, retailing, and the professional services that include accountancy, architecture and engineering, consulting, research, and legal and medical services. The Coalition of Service Industries represents a wide range of companies and associations in these industries, all of them interested in the growth of electronic commerce.

The Coalition of Service Industries' Electronic Commerce, Information Technology & Telecommunications (EIT) Working Group, chaired by Robert D. Kramer, Vice President for Policy Development of the Bank of America, was established in 1996. The EIT has created a set of recommendations that the Working Group hopes will help shape U.S. policy in the global electronic marketplace. The CSI recommendations identify the criteria we believe necessary for the development of a healthy environment that will permit electronic commerce to flourish globally.

We believe APEC should consider these principles, which include statements on:

Open Markets  
Free Flows of Information  
Privacy Protection  
Convergence: Telecommunications, Information Technology & Electronic Commerce  
Telecommunications Liberalization  
The General Agreement on Trade in Services (GATS)

Market-Based Solutions

Jurisdiction

- \* choice of law
- \* prudential considerations
- \* mode of supply
- \* advertising

Consumer Protection: Government Action

Consumer Protection: Business Action

CSI encourages APEC countries to support the tenets of the WTO Agreement on Telecommunications and the Moratorium on Customs Duties on Electronic Transmissions.

The CSI Electronic Commerce Recommendations are attached in appendix A. CSI would be pleased to answer any questions on the CSI Electronic Commerce Recommendations and how they will contribute to the global electronic commerce marketplace.

Sincerely,

Robert Vastine  
President

c/o  
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# **CSI Electronic Commerce, Information Technology & Telecommunications Working Group**

## **Recommendations on Electronic Commerce**

### **Electronic Commerce Recommendations**

The Coalition of Service Industries (CSI) represents the interests of the American services sector. The services sector now represents 75% of U.S. GDP. The great bulk of international commerce on-line encompasses all elements of the service sector. This includes telecommunications, information technology, media and publishing, financial services, transportation, travel and tourism, retailing, and the professional services: accountancy, architecture and engineering, consulting, research, and legal and medical services. The Coalition of Service Industries' Electronic Commerce Working Group includes a wide range of companies and associations in these industries, all of them interested in the growth of electronic commerce. The Working Group has developed a set of recommendations that CSI hopes will shape U.S. policy in international fora. The CSI recommendations identify the criteria we believe necessary for the development of a healthy environment that will permit electronic commerce to flourish globally.

#### Open Markets a Prerequisite

Open markets are essential for the fullest expression of the potential of electronic commerce. These markets will grow in ways that no government can anticipate. Premature or unnecessary government regulation risks quashing the electronic commerce market's phenomenal potential for discovery, innovation and expansion by creating disincentives for creativity and investment.

#### Free Flow of Information

The unimpeded flow of information through the Internet should be facilitated and protected. This flow should be over networks free to interconnect to enable non-discriminatory access to data flows from other networks.

#### Interoperability

Networks must be able to interoperate, enabling all interested users to communicate, no matter where the computer or network operator is located.

#### Electronic Commerce Activities in International Fora

CSI encourages APEC countries to support the tenets of the WTO Agreement on Telecommunications and the WTO Moratorium on Customs Duties on Electronic Transmissions.

#### Telecommunications Liberalization

CSI believes the WTO Agreement on Telecommunications already includes Internet services. Efforts to limit the Agreement's application as excluding certain electronic commerce services should be countered. In addition, it is necessary to secure full implementation of the WTO Telecommunications Agreement in order to promote the development of the telecommunications infrastructure on which electronic commerce depends. Countries acceding to the WTO should make substantive telecommunications commitments that include at a minimum: a date certain for full liberalization, phased removal of foreign ownership restrictions, and adoption of the Telecommunications Agreement Reference Paper in its entirety. Pro-competitive regulatory principles contained in the Telecommunications Agreement Reference Paper should, as they are implemented overtime engender access to the necessary developing infrastructure and networks and should preclude anti-competitive behavior by governments or monopolies. Furthermore, the Telecommunications Agreement (which includes the Reference Paper) should be cited as the baseline standard in all sub-regional free-trade agreements.

#### Tariffs & Customs Duties

Internationally, electronic transmissions are not now considered importations subject to customs duties. There are no customs duties on telephone calls across borders; there are no customs duties on fax messages; and, there are no customs duties when computers access databases. The WTO's Moratorium on Customs Duties on Electronic Transmissions reflects this state of affairs and promotes the expansion of electronic commerce. CSI supports making permanent the WTO's Moratorium to codify the duty free treatment of electronic transmissions. CSI urges APEC members to recognize the importance of the WTO's Moratorium and where possible as members of the WTO to support its permanent adoption.

#### Privacy Protection

The full development of Electronic Commerce requires the free flow of data, and it requires consumer confidence that personal data will be protected. Business is wholly committed to this objective. It can best be achieved by a balanced approach that recognizes different national legal systems, including laws, industry self-

regulation, privacy enhancing technologies and differing cultural standards. Such a balanced approach should ensure that data protection regimes are not applied in a discriminatory manner, are not used to limit market access, or to impede competition.

### Convergence: Telecommunications, Information Technology & Electronic Commerce

The inextricable linkage between telecommunications, information technology, electronic commerce and the Internet must be facilitated by governments and international organizations. Full development of electronic commerce absolutely requires unfettered access to information technology, value added services, and all network technologies operating in a highly competitive environment.

### Electronic Authentication

A private sector developed framework for the authentication of commitments made electronically should be established to facilitate electronic commerce and to be used as the basis for negotiations of multilateral agreements or international standards regarding electronic authentication or in bilateral "reciprocity" agreements. The framework for electronic authentication should enhance user trust, stimulate the growth of electronic commerce nationally and globally, and promote a competitive environment for the development of electronic authentication.

### GATS

The General Agreement on Trade in Services (GATS) is an established legally binding framework to liberalize trade in services. The framework has specific provisions to accomplish liberalization through inter alia regulatory transparency requirements, most favored nation treatment (MFN) and a process of achieving market access and national treatment obligations by WTO Members. The GATS is the basic instrument establishing the rights of services suppliers to compete freely in each others' markets. It applies to all services (except those supplied by governments) regardless of the means of delivery - whether by person, mail, telephone, Internet or other proprietary network. Thus a charge on the electronic export of a service by the importing country would not be permitted if that would violate a member's commitments under the GATS. While the GATS currently covers a broad range of services generally, including telecommunications and financial services, the scope and substance of the commitments under the GATS agreement should be widened to cover as much of the services sector as possible. APEC members should take note of the upcoming Services 2000 negotiations and support efforts to broaden and strengthen national commitments in all services sectors.

### Market-Based Solutions

Full realization of the potential of electronic commerce requires resolution of a number of cross-industry issues. Ill-conceived public policy or unresolved private concerns about data protection, cryptography, authentication, content, and intellectual property protection can inhibit the growth of electronic commerce. Resolution of these issues should be derived from the marketplace. Aside from fundamental market access and national treatment commitments that can be addressed in the WTO, industry self-regulation and the development of market-based solutions are the most effective way to address these important concerns.

#### Jurisdiction, Liability, Enforcement

While business to business electronic commerce is burgeoning based on private contract law, an impediment to the development of business to consumer electronic commerce is found in the issue of jurisdiction, that is, which country's laws apply to an electronic transaction. We advance as a basis for discussion the following tenets regarding jurisdiction.

##### Choice of Law

- The parties to an electronic contract or transaction should be permitted to choose which national (or in the case of federal systems, which local) body of law will govern the contract.

##### Prudential Considerations

- Transborder commerce in certain industries such as financial services are covered by prudential supervisory rules, which may apply also to electronic commerce. Industry representatives will work with their government regulators to resolve prudential issues in a manner that will promote global electronic commerce.

##### Mode of Supply

- Where the parties fail to specify the law governing an electronic contract or transaction, the default should be the laws and regulations of the country of the supplier of a service. A consumer from country A purchasing an electronically delivered service supplied from country B, in general, should be considered to have virtually left country A and traveled to country B to buy the service. This would be identified as "consumption abroad" or mode of supply 2 under the GATS. Were the law of the consumer's country to apply to electronic commerce, the growth of transborder electronic commerce would be slowed to a funereal pace. Complying with the vastly different regulatory regimes of more than 150 trading countries would be extraordinarily costly for a large multinational corporation, and probably impossible for smaller and mid-size businesses.

### Advertising

- Advertising a service on a web site should not be considered a direct advertisement in a foreign country, and thus should not be subject to the laws of that country. A company's web site advertisement is like a billboard in cyberspace.

### Consumer Protection

Consumer protection can be achieved in the electronic commerce marketplace through the enforcement of existing law, education, and self-regulation.

#### Government Action

- Governments cannot be asked to forego protection of consumers for the sake of electronic commerce, and of course they wouldn't do so. We suggest that governments develop protection of the rights of their consumers in consultation with the private sector and address international electronic commerce consumer protection issues through:
- Reaching bilateral or multilateral agreements mutually recognizing the validity of countries' consumer protection laws.
- Negotiating multilateral agreements based on market-driven private sector standards of consumer protection for electronic transactions.
- Providing direct assistance to consumers in obtaining redress in foreign jurisdictions, or developing arrangements with other countries for mutual assistance.
- Educating consumers about differences in consumer protection among countries.

#### Business Action

- For their part, companies should promote consumer confidence in electronic transactions. In addition to complying with the consumer protection laws and regulations of the supplier's jurisdiction, companies should:
- Develop market-driven standards for consumer protection.
- Disclose the applicable jurisdiction on their web sites.

- Comply with all applicable agreements to which their national government is signatory.
- Disclose voluntary participation in organizations that address consumer concerns.
- Provide information on how consumers can pursue a complaint.
- Refrain from false and misleading statements regarding consumer protections.

### Conclusion

The private sector should continue to lead the expansion of electronic commerce in order to spur innovation, and where governments do intervene, they should do so only to support the development of a vibrant electronic marketplace. Private and public sector efforts to establish open markets will attract investment capital for the development of infrastructure critical to electronic commerce. Therefore, in keeping with these recommendations, we seek government assistance in support of the development of a fair, transparent, and competitive electronic marketplace.